REMARKS

Upon entry of the foregoing Amendment, claims 1, 3-6, 10-13, and 30-33 are pending in the application. Claims 1, 4, 10, and 32 have been amended. No claims are cancelled or newly added. Applicant believes that this Amendment does not add new matter. In view of the foregoing Amendment and following Remarks, allowance of all the pending claims is requested.

OBJECTION UNDER 35 U.S.C. § 132

The Examiner has objected to the Amendment filed July 24, 2006 as allegedly introducing new matter into the disclosure. This objection is improper for at least the reason that the original specification supports the claim feature that the Examiner alleges constitutes new matter. However, solely for purposes of expediting prosecution of this application, Applicant has amended claim 1 to further clarify the invention. Accordingly, Applicant requests that the Examiner withdraw this objection.

REJECTION UNDER 35 U.S.C. §§ 102/103

The Examiner has rejected claims 1, 3-6, 10-13, and 30-33 under 35 U.S.C. § 102(e) and § 103 as allegedly being anticipated by, or alternatively obvious over, U.S. Patent No. 6,446,200 to Ball et al. ("Ball"). Final Action at 2-7. Applicant traverses this rejection because Ball does not disclose, teach, or suggest every feature of the claimed invention.

More particularly, Ball does not disclose, teach, or suggest at least the feature of "identifying a component parameter that measures a performance of one of the plurality of network components," as recited in claim 1, for example. The Examiner alleges that Ball discloses this feature of the claimed invention at col. 3-4; col. 31, lines 12-67; and Figs. 29a-b. Final Action at 5. In particular, the Examiner alleges that transmission of data, flow aggregation, distribution, and measuring packet loss, as disclosed by Ball, correspond to the claimed "component parameter that measures a performance of one of the plurality of network components" recited in claim 1. Applicant disagrees with the Examiner's assessment.

The relied upon aspects of Ball do not relate to "a component parameter that measures a performance of one of the plurality of network components," as recited in claim 1, for example. Instead, the cited portions of Ball relate to "a data collector layer . . . [that] collects data in the form of raw accounting data specific to the device type" (col. 4, lines 27-30). The collected data is subsequently "convert[ed] . . . into normalized records," which are forwarded "to a flow aggregation process" (col. 4, lines 32-37). As such, Ball discloses collecting raw data from a device, and subsequently normalizing, aggregating, and distributing the data to an accounting system, which determines if a quality of service policy is being satisfied. *See* col. 31, lines 10-38; and Fig. 1.

Nothing in the data collection and analysis process disclosed by Ball relates to "identifying a component parameter that measures a performance of one of the plurality of network components," and "monitoring a value of the component parameter," as recited in claim 1. Rather, Ball discloses observing and analyzing network flows using Network Accounting Records (col. 31, lines 25-38). The measured network flows thus provide a measure of a service level in a network (col. 31, lines 28-35). A measured network flow, however, is not "a component parameter that measures a performance of one of the plurality of network components."

Rather, the measured network flows measure the actual service level. By contrast, as recited in claim 1, for example, the measured component parameter is used to determine a service level based on "a relationship between the component parameter and the service parameter." For at least this reason, Ball fails to disclose, teach, or suggest all the features of the claimed invention. Accordingly, the rejection is improper and must be withdrawn.

Furthermore, in response to Applicant's previous arguments addressing these issues, the Examiner alleges that Ball discloses "monitoring and detecting of the 'transmission data packet losses,' and '% availability' and inputting these [*sic*] information into an 'Accountant' software for billing and monitoring of services provided." Thus, the Examiner appears to allege that packet loss and percentage of availability, as disclosed by Ball, are each "a component parameter that measures a performance of one of the plurality of network components." Applicants disagree.

More particularly, the Examiner is overlooking the feature of the claimed invention, which recites that the component parameter "measures a performance of one of the plurality of network components." For example, Ball discloses a monitor that "examines each packet of a network flow that passes through the device associated with the monitor." However, extracting information from a packet does not measure the "performance of one of the plurality of network components." A packet is not "a component parameter measures a performance of one of the plurality of network components" for at least the reason that packets are passed between and among many different network components.

Even when Ball discusses measuring the percentage of availability for a specific device (e.g., a router), the percentage of availability is not measured by "identifying" and "monitoring" a "component parameter that measures a performance of one of the plurality of network components," as recited in claim 1. Rather, Ball only discloses measuring data flows, or network traffic, to determine whether a router is satisfying the specified policy (col. 33, lines 45-65, "The accounting process is flexible . . . and can generate accounting records of any flow abstraction."

The measured data flows are not related to any one network component, and provide a direct measure of service level. By contrast, the claimed invention measures service level based on a relationship between a service parameter and a monitored component parameter, which measures the performance of one network component. For at least the reason that Ball focuses on data flows, which are not related to any one "component parameter" or "network component," Ball does not disclose, teach, or suggest every feature of the claimed invention. Accordingly, the rejection is improper and must be withdrawn.

Claims 3-6, 10-13, and 30-33 depend from and add features to claim 1. Thus, the rejections of these claims are likewise improper and must be withdrawn for at least the same reasons.

CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Date: **January 23, 2007**

Respectfully submitted,

By: _____

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